

January 26, 1999

Ms. Bonnie Lee Goldstein
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OFFICE OF THE
ATTORNEY GENERAL
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OR99-0243

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121375.

The City of Glen Heights (the "city") received a request for information relating to property located at 1918 Lillian Avenue in the city. You relate that you have released some of the responsive information but seek to withhold a portion, contending that it is excepted from public disclosure by Government Code sections 552.101 (in conjunction with the "informer's privilege"), 552.103, and 552.108. You have supplied the subject information. We have considered the exceptions you claim and have reviewed the documents at issue.


As your "litigation exception" argument, under section 552.103(a) of the Government Code is dispositive of this request, we will limit our discussion to that exception. Section 552.103 excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body claiming this exception has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You must meet both prongs of this test for information to be excepted under section 552.103(a).

The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 at 4 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and

is more than mere conjecture. *Id.* You represent that you have received a telephone call from an attorney retained by a potential litigant, and threatening suit. You have substantiated this assertion by producing a letter referencing that threat. We conclude that you have sufficiently established a reasonable anticipation of litigation. From our review of the subject information we conclude that it relates to that anticipated litigation. You may therefore withheld this information pursuant to Government Code section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael J. Burns", followed by a horizontal line.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 121375

Enclosures: Submitted documents

cc: Ms. Robin Cole Lane
Attorney at Law
2511 Ovilla Road
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(w/o enclosures)